

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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FRANKLIN STAINLESS CORP.,

Plaintiff,

-against-

**ORDER**

12 CV 3508 (DRH) (ETB)

SELECT STAINLESS, L.L.C.,

Defendant.

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**HURLEY, Senior District Judge:**

After defendant Select Stainless, L.L.C.'s default was noted by the Clerk of Court pursuant to Federal Rule of Civil Procedure 55(a), plaintiff Franklin Stainless Corp. moved for entry of a default judgment under Rule 55(b). (*See* Docket No. 9.) On November 21, 2012, this motion was referred to United States Magistrate Judge E. Thomas Boyle to issue a Report and Recommendation as to whether plaintiff has demonstrated that the allegations in the Complaint establish the defendant's liability such that the motion for default should be granted, and if so, to determine the appropriate amount of damages, costs, and/or fees, if any, to be awarded. On March 27, 2013, Judge Boyle issued a Report and Recommendation which recommended that a default judgment be entered against defendant Select Stainless, L.L.C. for the following amounts: (1) \$387,314.08 in breach of contract damages; (2) \$9,327.56 in anticipatory repudiation damages; (3) \$37,913.50 in prejudgment interest on its breach of contract damages, with additional interest to be calculated through the date of judgment at a rate of \$95.50 per day; (4) \$676.20 in prejudgment interest on its anticipatory repudiation damages, with additional interest to be calculated through the date of judgment at a rate of \$2.30 per day; and (5) post-judgment interest, to be calculated pursuant to 28 U.S.C. § 1961. (Docket No. 22.) More than

fourteen days have elapsed since service of the Report and Recommendation and no party has filed an objection.

Pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72, this Court has reviewed the Report and Recommendation for clear error, and finding none, now concurs in both its reasoning and its result. Accordingly, the Court adopts the March 27, 2013 Report and Recommendation of Judge Boyle as if set forth herein. Accordingly, the Court hereby directs that plaintiff Franklin Stainless Corp. recover damages from defendant Select Stainless, L.L.C. in the following amounts and that judgment be entered accordingly:

- (1) \$387,314.08 in breach of contract damages;
- (2) \$9,327.56 in anticipatory repudiation damages;
- (3) \$37,913.50 in prejudgment interest on its breach of contract damages, with additional interest to be calculated from March 27, 2013 through the date of judgment at a rate of \$95.50 per day;
- (4) \$676.20 in prejudgment interest on its anticipatory repudiation damages, with additional interest to be calculated from March 27, 2013 through the date of judgment at a rate of \$2.30 per day; and
- (5) Post-judgment interest, to be calculated pursuant to 28 U.S.C. § 1961.

Upon entry of judgment, the Clerk of the Court is directed to close this case.

**SO ORDERED.**

Dated: Central Islip, New York  
April 17, 2013

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/s/  
Denis R. Hurley  
United States District Judge